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LEAD TRACK AGREEMENT

AGREEMENT between the NORTHERN PACIFIC RAILWAY COMPANY, a Wisconsin corporation, the GREAT NORTHERN RAILWAY COMPANY, a Minnesota corporation, the OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, an Oregon corporation, and its lessee, the UNION PACIFIC RAILROAD COMPANY, <sup>a Utah corporation</sup> and the CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, a Wisconsin corporation, hereinafter jointly and severally called "the Railroads", and the UNITED STATES OF AMERICA, acting by and through its GENERAL SERVICES ADMINISTRATION, hereinafter called "GSA".

WITNESSETH:

WHEREAS, the United States of America was a former owner of the entire property known generally as the Auburn General Depot. During the sale of portions of the Depot, the Government retained certain railroad lead tracks and retained an easement for such tracks over the property sold. The lead tracks are indicated by the red line on the attached map marked Exhibit A.

WHEREAS, by license No. 1OPRA-L-63, dated April 1, 1968, GSA granted to the Railroads the right to use such lead tracks for switching purposes. The purpose of this agreement is to provide for maintenance and to set out other terms relative to the use of said tracks.

NOW, THEREFORE, in consideration of the premises and the mutual dependent promises, it is agreed by and between the Railroads and GSA as follows:

Section 1. Switching Service. The Railroads shall provide switching service for railroad cars over said lead tracks. The Railroads will furnish GSA a monthly report of

loaded cars switched to and from the various industries serviced by the lead tracks.

Section 2. Maintenance.

(a) GSA shall continue to own and shall pay for the cost of maintenance of said lead tracks. The performance of maintenance may be carried out by the Railroads or independent contractor, as GSA shall decide. A joint inspection of said tracks shall be made annually by the Railroads and GSA to determine what maintenance is required. The Railroads will provide GSA with an estimate of cost of any work required.

(b) In the event GSA decides to have the maintenance performed by the Railroads, it agrees to pay to the Railroads the actual cost of said work (without profit) within thirty (30) days after bills are rendered therefor. Actual costs should include all assignable cost, plus ten per cent (10%) to cover allowance of expense not capable of exact ascertainment, plus three per cent (3%) of the labor cost for insurance coverage.

(c) In the event GSA elects to have said maintenance performed by an outside contractor, all such work shall be done in a substantial and workmanlike manner, and in accordance with railroad standards.

(d) Regardless of who performs regular maintenance, in case of emergency the Railroads shall be entitled to make such repairs as they deem necessary, and GSA shall reimburse the Railroads for the cost of such repairs on the same basis as prescribed in paragraph (b) above.

Notice of the need of such emergency repairs shall be given to GSA as soon as practical after discovery of the need.

Section 3. Track Clearances.

(a) The GSA shall not place, or permit to be placed or to remain, any material, structure, pole or other obstruction within 8 1/2 ft. laterally from the center line of said lead tracks or within 23 ft. vertically from the top of the rails of said lead tracks.

(b) The GSA agrees that no building erected adjacent to said lead tracks shall have a swinging door or window opening towards said lead tracks which, when opened, will restrict the clearance to less than 8 1/2 ft. from the center line of any track.

(c) The GSA agrees that all wires of whatsoever kind or nature adjacent to or crossing over or under said lead tracks shall be installed and maintained in accordance with the national electric safety code in the laws of the State of Washington and in accordance with plans submitted by the GSA and approved by the Railroads.

(d) To the extent permitted by the Federal Tort Claims Act, the GSA agrees to indemnify and save harmless the Railroads from all loss, damages, penalties, costs of judgments that may be assessed or recovered from them on account of or in any manner growing out of a violation of the provisions of this section.

Section 4. Assessments.

The GSA shall pay all assessments required at any time by a municipality, public authority, corporation or person for the privilege of maintaining and operating said lead tracks.

Section 5. Assignments.

Neither the Railroads nor the GSA shall assign this

agreement or any interest therein without the written consent of the other; <sup>inure</sup> subject to the foregoing, this agreement shall be binding upon and to the benefit of the parties hereto and their successors and assigns.

Section 6. Hindrances.

The Railroads shall not be obligated to operate the said lead tracks if they shall be prevented or hindered from so doing by acts of God, public authority, strikes, riots, labor disputes or by any cause beyond their control.

Section 7. Termination.

(a) This agreement may be terminated by the Railroads or the GSA on 60 days written notice.

(b) The Railroads shall be privileged to terminate this agreement and to discontinue switching service to the GSA in the event the Railroads' right to use said lead tracks shall terminate, or the GSA shall fail to keep and perform any obligation or stipulation stated in or resulting under this agreement.

(c) In the event of such termination, the parties hereto shall give an accounting, and settlement shall be made of all amounts due from one party to another.

Section 8. Inspection of Records.

(a) The Railroads agree that the Administrator of General Services or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any books, documents, papers and records of the Railroads involving transactions related to this contract.

(b) The Railroads further agree to include in all subcontracts hereunder a provision to the effect that the sub-

contractor agrees that the Administrator of General Services or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding Two thousand, five hundred dollars (\$2,500.00) and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

Section 9. Indemnification.

The GSA will indemnify the Railroads to the extent permitted by the Federal Tort Claims Act, against claims of third persons arising from the negligence or misconduct of employees of the United States of America.

Section 10. General.

Obligations herein of the Railroads may be performed by such one or more of them as they may designate. In the absence of instructions to the contrary, GSA may direct correspondence concerning this agreement and make payments hereunder to Northern Pacific Railway Company.

Section 11. Past Maintenance.

As soon as practical, the Railroads will furnish GSA: (1) an accounting of car payments received from the industries served at the Auburn General Depot, and (2) an accounting of the actual costs of maintenance of said lead tracks as well as the industry spur tracks since November 1, 1960. GSA may verify such accounting pursuant to Section 8 hereof. Upon verification, the Railroads shall pay to GSA the difference between the amount received and the cost of maintenance. GSA



will distribute said difference to the industries or persons entitled thereto. Upon payment by the Railroads to GSA of said difference between the amount received and the cost of maintenance, the Railroads shall be relieved of any further responsibility therefor.

Section 12. Effective Date and Duration.

This agreement is effective April 1, 1968.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed this 28 day of JANUARY, 1968. 1970

NORTHERN PACIFIC RAILWAY COMPANY,

By N. M. Lorentzen  
Vice President

GREAT NORTHERN RAILWAY COMPANY,

By C. L. Larson  
Vice President

OREGON-WASHINGTON RAILROAD &  
NAVIGATION COMPANY  
UNION PACIFIC RAILROAD COMPANY,

By J. M. [Signature]  
Vice President

CHICAGO, MILWAUKEE, ST. PAUL &  
PACIFIC RAILROAD COMPANY,

By W. C. Brooks  
VICE PRESIDENT - OPERATION

UNITED STATES OF AMERICA,  
GENERAL SERVICES ADMINISTRATION,

By [Signature]

W. C. BROOKS, CONTRACTING OFFICER  
BUILDINGS MANAGEMENT DIVISION, PBS  
GSA, REGION 10, AUBURN, WA. 98002